

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

## ORDER

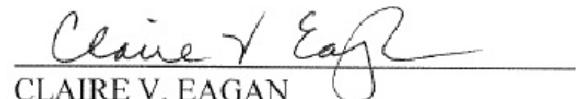
This action has come before the Court for consideration, and an opinion and order (Dkt. # 14) has been entered dismissing plaintiff's state law claims of breach of contract and bad faith because they are preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1101 et seq. (ERISA). In its opinion and order (Dkt. # 14), the Court informed plaintiff that he "may, if he wishes, file an amended complaint asserting an ERISA claim" no later than November 5, 2021. Dkt. # 14, at 8. The deadline has long since passed and plaintiff has not filed an amended complaint.

Under Fed. R. Civ. P. 41(b), a district court may dismiss an action if plaintiff fails to prosecute the action, fails to comply with court orders, or fails to comply with federal rules of civil procedure or local court rules. AdvantEdge Bus. Grp. v. Thomas E. Mestmaker & Assocs., Inc., 552 F.3d 1233, 1236 (10th Cir. 2009). “When dismissing a case without prejudice, a district court may, without abusing its discretion, enter such an order without attention to any particular procedures.” Id. (internal quotations omitted). Here, the Court specifically advised plaintiff that he may file an

amended complaint, no later than November 5, 2021, alleging an ERISA claim. Dkt. # 14, at 8. Because the deadline has passed and plaintiff has not filed an amended complaint, plaintiff has failed to prosecute the action and to comply with a court order. Therefore, pursuant to Rule 41(b), this case should be dismissed without prejudice .

**IT IS THEREFORE ORDERED** that this action is **dismissed without prejudice** for failure to file an amended complaint alleging an ERISA claim, thereby failing to prosecute and to comply with a court order. A separate judgment is entered herewith.

**DATED** this 28th day of February, 2022.

  
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CLAIRES V. EAGAN  
UNITED STATES DISTRICT JUDGE